

**PATENT COOPERATION TREATY**

PCT/EP2004/007397

**PCT**

NOTIFICATION OF TRANSMITTAL  
OF COPIES OF TRANSLATION  
OF THE INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY  
(CHAPTER I OR CHAPTER II  
OF THE PATENT COOPERATION TREATY)  
(PCT Rules 44bis.3(c) and 72.2)

From the INTERNATIONAL BUREAU PAU

Global Intellectual Property

28. Juni 2006

To:

BASF AKTIENGESELLSCHAFT  
67056 Ludwigshafen  
ALLEMAGNE

1. AST / crt  
2. DEF

(D - Dechancéed  
NL - Soldw  
AP, PO - Kopien  
API - Italy  
US - USA  
EC - EC2)

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|---|
| Date of mailing (day/month/year)<br>22 June 2006 (22.06.2006) |
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|---|
| Applicant's or agent's file reference<br>0000054754 |
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**IMPORTANT NOTIFICATION**

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| International application No.<br>PCT/EP2004/007397 |
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|---|
| International filing date (day/month/year)<br>07 July 2004 (07.07.2004) |
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| Applicant |
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BASF AKTIENGESELLSCHAFT et al

*El: Phase beendet 23.12.2005*

**1. Transmittal of the translation to the applicant.**

- The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter I).
- The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter II).

**2. Transmittal of the copy of the translation to the designated or elected Offices.**

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following designated or elected Offices requiring such translation:

None

The following designated or elected Offices, having waived the requirement for such a transmittal at this time, will receive copies of that translation from the International Bureau only upon their request:

AE, AG, AL, AM, AP, AT, AU, AZ, BA, BB, BG, BR, BW, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, DE, DK, DM, DZ, EA, EC, EE, EG, EP, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NA, NI, NO, NZ, OA, OM, PG, PH, PL, PT, RO, RU, SC, SD, SE, SG, SK, SL, SY, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, YU, ZA, ZM, ZW

**3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).**

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary report on patentability (Chapter II).

**It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned within the applicable time limit (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.**

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| The International Bureau of WIPO<br>34, chemin des Colombettes<br>1211 Geneva 20, Switzerland |
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Authorized officer

Yolaine Cussac

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| Facsimile No.+41 22 338 70 80 |
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**PATENT COOPERATION TREATY**  
**PCT**

**INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY**  
(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

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| Applicant's or agent's file reference<br>0000054754  | <b>FOR FURTHER ACTION</b>  |  |
| See item 4 below   |  |  |
| International application No.<br>PCT/EP2004/007397   | International filing date ( <i>day/month/year</i> )<br>07 July 2004 (07.07.2004) | Priority date ( <i>day/month/year</i> )<br>30 July 2003 (30.07.2003) |
| International Patent Classification (8th edition unless older edition indicated)<br>See relevant information in Form PCT/ISA/237 |  |  |
| Applicant<br><b>BASF AKTIENGESELLSCHAFT</b>  |  |  |

|   |              |   |           |                     |                                     |            |          |                          |             |  |                          |            |                            |                                     |           |   |                                     |            |                         |                          |             |  |                          |              |   |
|---|--------------|---|-----------|---------------------|-------------------------------------|------------|----------|--------------------------|-------------|--|--------------------------|------------|----------------------------|-------------------------------------|-----------|---|-------------------------------------|------------|-------------------------|--------------------------|-------------|--|--------------------------|--------------|---|
| <p>1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).</p> <p>2. This REPORT consists of a total of 7 sheets, including this cover sheet.</p> <p>In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.</p>   |              |   |           |                     |                                     |            |          |                          |             |  |                          |            |                            |                                     |           |   |                                     |            |                         |                          |             |  |                          |              |   |
| <p>3. This report contains indications relating to the following items:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"><input checked="" type="checkbox"/></td> <td style="width: 15%;">Box No. I</td> <td style="width: 70%;">Basis of the report</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table> <p>4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).</p> |              | <input checked="" type="checkbox"/>   | Box No. I | Basis of the report | <input checked="" type="checkbox"/> | Box No. II | Priority | <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability | <input type="checkbox"/> | Box No. IV | Lack of unity of invention | <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement | <input checked="" type="checkbox"/> | Box No. VI | Certain documents cited | <input type="checkbox"/> | Box No. VII | Certain defects in the international application | <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |
| <input checked="" type="checkbox"/>   | Box No. I    | Basis of the report   |           |                     |                                     |            |          |                          |             |  |                          |            |                            |                                     |           |   |                                     |            |                         |                          |             |  |                          |              |   |
| <input checked="" type="checkbox"/>   | Box No. II   | Priority  |           |                     |                                     |            |          |                          |             |  |                          |            |                            |                                     |           |   |                                     |            |                         |                          |             |  |                          |              |   |
| <input type="checkbox"/>  | Box No. III  | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability  |           |                     |                                     |            |          |                          |             |  |                          |            |                            |                                     |           |   |                                     |            |                         |                          |             |  |                          |              |   |
| <input type="checkbox"/>  | Box No. IV   | Lack of unity of invention  |           |                     |                                     |            |          |                          |             |  |                          |            |                            |                                     |           |   |                                     |            |                         |                          |             |  |                          |              |   |
| <input checked="" type="checkbox"/>   | Box No. V    | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |           |                     |                                     |            |          |                          |             |  |                          |            |                            |                                     |           |   |                                     |            |                         |                          |             |  |                          |              |   |
| <input checked="" type="checkbox"/>   | Box No. VI   | Certain documents cited   |           |                     |                                     |            |          |                          |             |  |                          |            |                            |                                     |           |   |                                     |            |                         |                          |             |  |                          |              |   |
| <input type="checkbox"/>  | Box No. VII  | Certain defects in the international application  |           |                     |                                     |            |          |                          |             |  |                          |            |                            |                                     |           |   |                                     |            |                         |                          |             |  |                          |              |   |
| <input type="checkbox"/>  | Box No. VIII | Certain observations on the international application   |           |                     |                                     |            |          |                          |             |  |                          |            |                            |                                     |           |   |                                     |            |                         |                          |             |  |                          |              |   |

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|---|---|
| Date of issuance of this report<br>12 June 2006 (12.06.2006)  |   |
| The International Bureau of WIPO<br>34, chemin des Colombettes<br>1211 Geneva 20, Switzerland<br><br>Facsimile No. +41 22 740 14 35 | Authorized officer<br><br><b>Yolaine Cussac</b><br>Telephone No. +41 22 338 70 80 |

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:

**PCT**

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

|   |   |   |
|---|---|---|
|   |   | Date of mailing<br>(day/month/year)                 |
| Applicant's or agent's file reference<br><b>0000054754</b>                        |   | <b>FOR FURTHER ACTION</b><br>See paragraph 2 below  |
| International application No.<br><b>PCT/EP2004/007397</b>                         | International filing date (day/month/year)<br><b>07.07.2004</b> | Priority date (day/month/year)<br><b>30.07.2003</b> |
| International Patent Classification (IPC) or both national classification and IPC |   |   |
| Applicant<br><b>BASF AKTIENGESELLSCHAFT</b>                                       |   |   |

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability: citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

|  |                    |
|--|--------------------|
| Name and mailing address of the ISA/EP | Authorized officer |
| Facsimile No.                          | Telephone No.      |

**Translation**

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/007397

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.  
 This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material  
 a sequence listing  
 table(s) related to the sequence listing
  - b. format of material  
 in written format  
 in computer readable form
  - c. time of filing/furnishing  
 contained in the international application as filed.  
 filed together with the international application in computer readable form.  
 furnished subsequently to this Authority for the purposes of search.
3.  In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/007397

Box No. II Priority

1.  The following document has not yet been furnished:

- copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).  
 translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2.  This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2004/007397

|   |        |  |     |             |        |             |     |  |        |       |    |                     |        |             |     |  |        |       |    |                               |        |             |     |  |        |       |    |
|---|--------|--|-----|-------------|--------|-------------|-----|--|--------|-------|----|---------------------|--------|-------------|-----|--|--------|-------|----|-------------------------------|--------|-------------|-----|--|--------|-------|----|
| Box No. V   |        | Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |     |             |        |             |     |  |        |       |    |                     |        |             |     |  |        |       |    |                               |        |             |     |  |        |       |    |
| <p><b>1. Statement</b></p> <table> <tr> <td align="center">Novelty (N)</td> <td align="center">Claims</td> <td align="center"><u>1-10</u></td> <td align="center">YES</td> </tr> <tr> <td></td> <td align="center">Claims</td> <td align="center">_____</td> <td align="center">NO</td> </tr> <tr> <td align="center">Inventive step (IS)</td> <td align="center">Claims</td> <td align="center"><u>1-10</u></td> <td align="center">YES</td> </tr> <tr> <td></td> <td align="center">Claims</td> <td align="center">_____</td> <td align="center">NO</td> </tr> <tr> <td align="center">Industrial applicability (IA)</td> <td align="center">Claims</td> <td align="center"><u>1-10</u></td> <td align="center">YES</td> </tr> <tr> <td></td> <td align="center">Claims</td> <td align="center">_____</td> <td align="center">NO</td> </tr> </table> <p><b>2. Citations and explanations:</b></p> <p>The present invention relates to a synergistic fungicidal mixture of (I) and (II) according to claim 1. D1 (EP 0988790) describes more general synergistic fungicidal compositions, with a plurality of possible selections for the two constituents. The present invention is encompassed in D1, however.</p> <p>None of the examples of D1 describes the claimed composition. The present application satisfies the criterion in PCT Article 33(2) because the subject matter of claims 1-10 is novel in relation to the prior art as defined in the Regulations (PCT Rule 64.1 to 64.3).</p> <p>Since D1 discloses a plurality of examples with relatively small differences in comparison with the present invention, it would be expected <i>prima facie</i> that the claimed composition has a synergistic effect. Although synergism is considered in principle as not predictable, a person skilled in the art would obtain sufficient information from D1 to expect that certain variations would likewise lead to the desired effect. However, the present application contains comparative experiments in which the most similar explicitly</p> |        |  |     | Novelty (N) | Claims | <u>1-10</u> | YES |  | Claims | _____ | NO | Inventive step (IS) | Claims | <u>1-10</u> | YES |  | Claims | _____ | NO | Industrial applicability (IA) | Claims | <u>1-10</u> | YES |  | Claims | _____ | NO |
| Novelty (N)   | Claims | <u>1-10</u>  | YES |             |        |             |     |  |        |       |    |                     |        |             |     |  |        |       |    |                               |        |             |     |  |        |       |    |
|   | Claims | _____  | NO  |             |        |             |     |  |        |       |    |                     |        |             |     |  |        |       |    |                               |        |             |     |  |        |       |    |
| Inventive step (IS)   | Claims | <u>1-10</u>  | YES |             |        |             |     |  |        |       |    |                     |        |             |     |  |        |       |    |                               |        |             |     |  |        |       |    |
|   | Claims | _____  | NO  |             |        |             |     |  |        |       |    |                     |        |             |     |  |        |       |    |                               |        |             |     |  |        |       |    |
| Industrial applicability (IA)   | Claims | <u>1-10</u>  | YES |             |        |             |     |  |        |       |    |                     |        |             |     |  |        |       |    |                               |        |             |     |  |        |       |    |
|   | Claims | _____  | NO  |             |        |             |     |  |        |       |    |                     |        |             |     |  |        |       |    |                               |        |             |     |  |        |       |    |

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
**PCT/EP2004/007397**

**Box No. V      Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

mentioned compounds of D1 are employed. These experiments demonstrate clearly that the selection made in accordance with the invention not only makes it possible to achieve a synergistic effect, but also that an improved synergistic effect over the most similar compositions of D1 can be obtained. This improvement could not have been expected. The present application satisfies the criterion in PCT Article 33(3) because the subject matter of claims 1-10 involves an inventive step (PCT Rule 65.1 to 65.2).

The present application satisfies the criterion in PCT Article 33(4) because the subject matter of claims 1-10 is considered industrially applicable.

It is assumed that all claims enjoy priority. Should this later prove not to be the case, the document cited under item VI hereinbelow could become relevant for assessing whether the criteria of PCT Article 33(1) have been satisfied.

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/EP2004/007397

**Box No. VI      Certain documents cited**

**1. Certain published documents (Rule 43bis.1 and 70.10)**

| Application No.<br>Patent No. | Publication date<br>(day/month/year) | Filing date<br>(day/month/year) | Priority date (valid claim)<br>(day/month/year) |
|-------------------------------|--------------------------------------|---------------------------------|---|
| <b>WO 2004/045288</b>         | <b>03.06.2004</b>                    | <b>14.11.2003</b>               | <b>15.11.2002</b>                               |

**2. Non-written disclosures (Rule 43bis.1 and 70.9)**

| Kind of non-written disclosure | Date of non-written disclosure<br>(day/month/year) | Date of written disclosure<br>referring to non-written disclosure<br>(day/month/year) |
|--------------------------------|--|---|
|                                |  |   |

**See form 210**